MS (4)

No. 09-253

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

HECTOR ADAMES, JR., *et al.*,
Petitioners,

v.

BERETTA U.S.A. CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether review is merited with respect to Section 7903(5)(A)(iii) of the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903 ("PLCAA" or the "Act"), where any issue relating to that section was not preserved for review and, in any event, the section is not applicable to this case.

2. Whether review is merited where the Illinois Supreme Court correctly applied the settled standard for review of federal statutes under the Tenth Amendment, and there is no conflict among courts on this issue.

3. Whether review is merited when, contrary to Petitioners' contentions, the PLCAA neither favors statutory claims over common law claims nor dictates which branch of state government is the authoritative expositor of state law.

4. Whether review is merited where the Illinois Supreme Court applied the plain and unambiguous language of Section 7903(5)(A)(v) of the PLCAA to the facts of this case in concluding that Petitioners' tort claims were barred by the PLCAA.

CORPORATE DISCLOSURE STATEMENT

Beretta U.S.A. Corp. is majority owned by Beretta Holding S.p.A. There are no publicly held companies that own ten percent or more of Beretta U.S.A. Corp.'s stock.

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BRIEF IN OPPOSITION

Respondent Beretta U.S.A. Corp. respectfully requests that the Court deny Petitioners' petition for a writ of certiorari to the Illinois Supreme Court for four reasons:

First, contrary to Petitioners' contention, Section 7903(5)(A)(iii) of the PLCAA does not provide a basis for granting review because that section was not raised below and does not apply to this case.

Second, contrary to Petitioners' contention, there is no conflict between the Illinois Supreme Court and the precedent of this Court or the circuits regarding the standard for resolving Petitioners' Tenth Amendment challenge to the PLCAA.

Third, the PLCAA sets a new single federal standard that governs what claims may and may not be brought against firearm manufacturers and sellers, and the Act applies it equally to preempt conflicting state law claims, whether those claims are based on common law or state statute

Fourth, the Illinois Supreme Court correctly applied the plain and unambiguous language of Section 7903(5)(A)(v) of the PLCAA to the facts of this case in concluding that Petitioners' tort claim was barred by the Act because "the discharge of the [firearm] was caused by a volitional act that constituted a criminal offense."

In short, Petitioners have failed to present a compelling reason for certiorari.

INTRODUCTION

Congress enacted the PLCAA to address the wave of lawsuits brought in recent years by municipalities and individuals against manufacturers and sellers of firearms for harm resulting from the criminal misuse of their products, citing the burdens to interstate and foreign commerce imposed by such suits. *See* 15 U.S.C. §§ 7901(a)(3), (5); §§ 7901(b)(l), (4). The Act requires courts to immediately dismiss any "qualified civil liability action" pending on the date of the PLCAA's enactment. *Id.* at § 7902(b). Petitioners are suing Beretta U.S.A. Corp., a manufacturer of firearms, for wrongful death damages resulting from the criminal and/or unlawful misuse of the subject Beretta pistol by a third party. Therefore, Petitioners' case falls squarely within the definition of a prohibited "qualified civil liability action" under Section 7903(5)(A).

To avoid the clear application of the Act to their case, Petitioners were required to establish that their action fit within one of the exceptions set forth in the Act. Through the exceptions in Sections 7903(5)(A)(i)-(vi), Congress set forth the grounds on which any plaintiff—private or public—may bring or maintain a lawsuit against a firearm manufacturer, distributor or retailer based on a third party's criminal acts. Some of the claims preserved in the six exceptions to a "qualified civil liability action" are common law claims, *see, e.g.*, § 7903(5)(A)(iv) (breach of contract or warranty), and some are statute-based, *see, e.g.*, § 7903(5)(A)(i) (violation of 18 U.S.C. § 924(h) or comparable state felony law).

Petitioners sought to circumvent the Act based solely on the product liability exception (15 U.S.C. § 7903(5)(A)(v)), which preserves from dismissal actions "for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage." 15 U.S.C. § 7903(5)(A)(v). However, because the third party's injury-causing actions in this case were both volitional and criminal in nature, the Illinois Supreme Court correctly determined that his discharge of the Beretta pistol was the "sole proximate cause" of Petitioners' damages, thereby requiring an immediate dismissal of Petitioners' action.

REASONS FOR DENYING THE WRIT

This case does not qualify for Supreme Court review. The main thrust of Petitioners' argument is that

certiorari is warranted for this Court to review the predicate exception of the PLCAA, Section 7903(5)(A)(iii). However, that section of the Act was not argued as being applicable to this case below and it has no application to the facts of this case in any event. Petitioners' argument that this Court should grant review to evaluate Petitioners' Tenth Amendment challenge to the Act is similarly lacking in merit. In holding that the PLCAA does not run afoul of the Tenth Amendment, the Illinois Supreme Court correctly applied the settled legal standard and did not establish a new principle of law or create any conflict with decisions of this Court or other courts. Finally, review is not warranted to determine whether the Illinois Supreme Court erred in applying the law to the facts where the Court simply applied the plain and unambiguous language of Section 7903(5)(A)(v) of the PLCAA to the facts of this case in concluding that Petitioners' tort claims were barred by the Act.

FACTUAL BACKGROUND

On May 5, 2001, Billy Swann, then 13 years old, went into his parents' bedroom, against house rules, and retrieved his father's Beretta Model 92 service weapon from a gun case containing two other firearms which was kept in the closet. Petitioners' Appendix ("Pet. App.") 3a. Billy's father was a Cook County Corrections officer certified to carry the subject Beretta pistol as his duty pistol.[1] Pet. App. 6a.

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[1] The subject Beretta Model 92FS pistol is favored by law enforcement agencies and military organizations. Pet. App. 10a. It has a number of safety features, but does not include a feature advanced by Petitioners below—a magazine disconnect safety—because it is eschewed by the vast majority of law

Though Billy knew his parents would disapprove, he nonetheless began to play with the pistol, loading and unloading the available ammunition in the pistol's magazine. *Id.* at 3-4a. Several times, Billy loaded and unloaded the magazine with a live cartridge he would eject from the pistol by manually moving the slide rearward. *Id.* Throughout this process, Billy repeatedly manipulated the magazine release button to remove the loaded magazine. *Id.* He knew that the pistol was loaded when the magazine was inserted in the pistol but claimed to believe it was unloaded when the magazine was removed. *Id.* at 4a. Billy had not read the Instruction Manual, even though the manual contained numerous instructions on safe handling and "explicit step-by-step instructions on how to safely and completely unload" the pistol. *Id.* at 4a, 10a, 56-57a.

Billy carried the Beretta pistol and another of his father's firearms downstairs and showed them to a friend who had come over to the house. *Id.* When Joshua Adames arrived about 10 minutes later, Billy showed him the firearms as well. Billy and Joshua began to wrestle for the Beretta pistol. Billy depressed the magazine release button and removed the magazine. He then pointed the pistol at Joshua and deliberately pulled the trigger, thereby discharging the live cartridge of ammunition in the chamber. *Id.* at 3-4a, 39a, 42a, and 51a. Joshua died from injuries sustained in the shooting.

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enforcement personnel who wish to be able to fire a chambered cartridge even if the magazine is inadvertently released. Pet. App. 10a, 12a, 56a. Beretta has found that there is little market demand for a law enforcement pistol equipped with a magazine disconnect safety and most agencies either demand or otherwise express a strong preference for a pistol without such a feature. *Id.* at 12a.

In a subsequent state juvenile court proceeding, Billy was adjudicated a delinquent based upon the court's finding that he committed involuntary manslaughter (720 ILCS 5/9-3(a)[West 2000] Resp. App. 1a) and reckless discharge of a firearm (720 ILCS 5/24-1.5(a)[West 2000] Resp. App. 1a), both criminal offenses under the Illinois Criminal Code. Pet. App. 5a. The juvenile court's finding was affirmed on appeal by the Illinois Court of Appeal in an unpublished order. Pet. App. 37a. *See In re: W.S. (People v. W.S.)* (Nov. 26, 2003), No. 1-02-1170 [First Judicial District, Fifth Div.](Resp. App. 5-16a),[2] *pet. for leave to appeal denied*, 208 Ill.2d 538, 809 N.E.2d 1286 (2004).

PROCEEDINGS BELOW

Petitioners filed a wrongful death and survival action in Cook County Circuit Court naming Billy's father, David Swan, Cook County Sheriff Michael F. Sheahan, a local firearms retailer, Beretta U.S.A. Corp. and Fabbrica d'Armi Pietro Beretta S.p.A.

Following extensive discovery, Respondent filed a motion for summary judgment seeking dismissal of Petitioners' product liability and breach of warranty claims. The trial court granted Respondent's motion in its entirety on August 23, 2005, "based on the record" and "for all the reasons stated by Defendant Beretta and all relevant law." Pet. App. 15-16a, 60a, and 103-04a.

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[2] Below, Petitioners argued that the Illinois Supreme Court could not consider the unpublished order affirming Billy's delinquency adjudication. However, as that court made clear, it could properly take judicial notice of the unpublished order without running afoul of Illinois Supreme Court Rule 23. Pet. App. 37-38a. *See* Resp. App. 2-4a.

Several months later, Congress enacted the PLCAA. Section 7902(b) of the Act requires an immediate dismissal of any "qualified civil liability action that is pending on the date of enactment [enacted Oct. 26, 2005]." 15 U.S.C. § 7902(b).

Petitioners timely appealed the trial court's dismissal of their design defect and failure to warn claims. Pet. App. 33a. In its briefing before the appellate court, Beretta argued that the PLCAA required dismissal of Petitioners' pending action. The appellate court affirmed in part and reversed in part. As it relates to the issues raised here, the appellate court found that the Beretta pistol was not unreasonably dangerous and therefore not defective in its design under either Illinois' consumer expectations test or risk-utility test. Pet. App. 85a, 89a. However, the appellate court concluded a question of fact existed as to whether Beretta's warnings were sufficient. *Id.* at 92a. As for the PLCAA, the appellate court concluded without analysis that the Act applied to Petitioners' action and that only one exception—the exception found in Section 7903(5)(A)(v)—was potentially applicable. Pet. App. 36a, 98a. The appellate court concluded that a question of fact existed as to whether Billy's conduct was volitional or "constituted a criminal offense" sufficient to preclude application of the statutory exception, thereby requiring dismissal of the appeal and the underlying action. Pet. App. at 98-99a.

In an unanimous decision, the Illinois Supreme Court reversed the appellate court and concluded that the PLCAA applied to Petitioners' claims against Beretta and that those claims fit squarely within the definition of a "qualified civil liability action" under the Act. Pet. App. 39a ("Accordingly, we find that

plaintiffs' lawsuit is a qualified civil liability action as defined in the PLCAA."). The court then concluded that the product liability exception did not apply because Billy Swan's conduct was volitional and that it constituted a criminal offense. Pet. App. 41-43a. Therefore, under the plain language of the product liability exception, the court determined that Billy's actions became the "sole proximate cause" of Joshua's death. Without the product liability exception to revive Petitioners' qualified civil liability action, it was properly dismissed. Pet. App. 46a.

I. SECTION 7903(5)(A)(iii) OF THE PLCAA—ON WHICH THE PETITION IS BASED—HAS NO APPLICATION TO THIS CASE.

Beginning with their Questions Presented, Petitioners cite to 15 U.S.C. § 7903(5)(A)(iii)[known as the "predicate exception"] as evidence of what they argue is Congress's "anti-judicial, pro-legislative objective in enacting the PLCAA." (Petition at 3-4).[3] From there, Petitioners argue the predicate exception is "a breathtaking and unprecedented attempt to control how states make law," and, as such, provides

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[3] Section 7903(5)(A)(iii) of the Act, one of the six exceptions to a "qualified civil liability action" under Section 7903(5)(A), does not preempt "an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought . . . ." 15 U.S.C § 7903(5)(A)(iii). "This exception has become known as the 'predicate exception,' because a plaintiff not only must present a cognizable claim, he or she must allege a knowing violation of a 'predicate statute.'" *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1132 (9th Cir. 2009) (quoting *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384, 390 (2nd Cir. 2008), *cert. denied*, 129 S. Ct. 1579 (Mar. 9, 2009)).

a primary ground for granting their petition. Petition at 7-8. *See also* Petition at 3-4, 13, 19-21.

As is plain from the record below, however, this case has nothing whatever to do with the predicate exception.[4] In fact, Section 7903(5)(A)(iii) was not argued below as being applicable to this case and it is cited *nowhere* in the Illinois Supreme Court's decision. Rather, as found by both the Illinois Court of Appeal and the Illinois Supreme Court, the only PLCAA exception that had any possible application was th "product liability exception" embodied in Section 7903(5)(A)(v). Pet. App. 40a, 98a. Petitioners did not challenge that finding below. *Id.*

Because the predicate exception was never raised below, and has no application to this case in any event, the Illinois Supreme Court did not consider, much less decide, "an important federal question" or "an important question of federal law" relating to the predicate exception which has been preserved for this Court's review. Supreme Court Rule 10. Accordingly, the Court should reject Petitioners' ill-conceived "predicate exception" argument as completely irrelevant to the issues raised in this case.

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[4] Unlike the case below, the predicate exception has been the subject of some discussion in other cases. *See, e.g., Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009); *City of New York v. Beretta U.S.A. Corp.*, 524 F.3d 384 (2nd Cir. 2008), *cert. denied*, 129 S. Ct. 1579 (Mar. 9, 2009); *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163 (D.C. 2008), *cert. denied sub nom, Lawson v. Beretta U.S.A. Corp.*, 129 S. Ct. 1579 (Mar. 9, 2009).

II. THE ILLINOIS SUPREME COURT APPLIED SETTLED TENTH AMENDMENT STANDARDS IN ITS REVIEW OF THE PLCAA.

The Illinois Supreme Court held that the PLCAA does not violate the Tenth Amendment. Because it "is a valid exercise of the federal power to regulate interstate commerce, Congress had not intruded upon an area of authority traditionally reserved to the states and does not impermissibly commandeer the states or their officials in violation of the Tenth Amendment." Pet. App. 45a.

In its analysis, the court found persuasive the holding of the Second Circuit in *City of New York v. Beretta*, 524 F.3d 384 (2nd Cir. 2008), *cert. denied*, 129 S.Ct. 1579 (Mar. 9, 2009), a case in which a virtually identical Tenth Amendment challenge to the PLCAA was rejected. Indeed, this Court denied the City of New York's petition for a writ of certiorari in that case in which the City raised the same issues and argument asserted by Petitioners here. *City of New York, New York, et al., v. Beretta U.S.A. Corp., et al.*, 129 S. Ct. 1579; 173 L. Ed. 2d 675; 2009 U.S. LEXIS 1833; 77 U.S.L.W. 3505 (Mar. 9, 2009).

This Court's Tenth Amendment jurisprudence is entirely consistent with the approach taken by the Illinois Supreme Court in this case and the Second Circuit in *City of New York*. That jurisprudence is established in a series of recent cases, which set out the standard the Illinois Supreme Court and the Second Circuit applied. In *New York v. United States*, 505 U.S. 144, 166 (1992), the Court held: "We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power

directly to compel the States to require or prohibit those acts." This principle was further explained in *Printz v. United States*, 521 U.S. 898, 935 (1997), where the Court held that the "Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program . . . [because] such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

In *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), the Court reconfirmed its approach to Tenth Amendment issues:

> In examining congressional enactments for infirmity under the Tenth Amendment, this Court has focused its attention on laws that commandeer the States and state officials in carrying out federal regulatory schemes.

Id. at 186 (citing *Printz v. United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992). In *McConnell*, there was no "contention that Congress has overstepped its Elections Clause power," *McConnell*, 540 U.S. at 187, just as Petitioners here make no argument that Congress's passage of the PLCAA was not authorized by the Commerce Clause.

In the Court's most recent Tenth Amendment opinion, the plaintiffs challenged the authority of the Office of the Controller of the Currency to regulate, to the exclusion of state authorities, the mortgage business of national banks, even where that business was conducted through the banks' state-licensed operating subsidiaries. *See Watters v. Wachovia Bank, N.A.*,

550 U.S. 1 (2007). In rejecting the plaintiffs' Tenth Amendment challenge, the Court held:

> As we have previously explained, "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York v. United States*, 505 U.S. 144, 156, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). Regulation of national bank operations is a prerogative of Congress under the Commerce and Necessary and Proper Clauses. *See Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 58, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003) (per curiam). The Tenth Amendment, therefore, is not implicated here.

Id. at 22. Since the Commerce Clause authorized Congress to pass the PLCAA, "[t]he Tenth Amendment, therefore, is not implicated." *Id.* That should end the analysis.

In an effort to avoid this result, however, Petitioners attempt to manufacture a conflict with the decisions of other Circuits where none in fact exist. First, in the face of multiple constitutional challenges to the PLCAA in other actions, virtually every court has found that the Act is constitutional. *See, e.g., Ileto v. Glock, Inc.*, 565 F.3d 1126 (9th Cir. 2009) (rejecting equal protection, takings, due process, and separation of powers challenges to the PLCAA); *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 172-82 (D.C. 2008) (rejecting separation of powers, due process, and takings challenges to the constitutionality of the Act). Indeed, Respondents are aware of only one court (a state trial court) that has ruled that the Act is unconstitutional (on other grounds), and even that court rejected the very Tenth Amendment argument Petitioners make here. *See*

City of Gary v. Smith & Wesson Corp., Cause No. 45D05-00005-CT-00243, slip op. (Oct. 23, 2006) (rejecting Tenth Amendment challenge because PLCAA "is not commandeering" of state action), *aff'd on other grounds*, 875 N.E.2d 422 (Ind. Ct. App. 2007), *rehn'g denied sub nom., Smith & Wesson Corp. v. City of Gary*, 2008 Ind. App. LEXIS 8 (Ind. Ct. App., Jan. 9, 2008), *pet. to transfer denied*, 2009 Ind. LEXIS 12 (Ind. Sup. Ct., Jan. 12, 2009).[5]

Second, Petitioners' claim that the Illinois Supreme Court's approach conflicts with the analysis of the Fourth Circuit as expressed in *United States v. Johnson*, 114 F.3d 476 (4th Cir. 1997), the First Circuit in *United States v. Bongiorno*, 106 F.3d 1027 (1st Cir. 1997), and the Tenth Circuit in *United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996), is similarly mistaken. Each of those opinions reviewed and upheld the constitutionality of the Child Support Recovery Act of 1992 ("CSRA") in a manner entirely consistent with the standard applied by the Illinois Supreme Court here and the Second Circuit just before it. In *Hampshire*, the Court held: "In light of our holding that congressional enactment of the CSRA does not violate the Commerce Clause, Mr. Hampshire's Tenth Amendment argument fails." *Hampshire*, 95 F.3d at 1004.

Similarly, the Court in *Bongiorno* held that the Tenth Amendment "is not applicable to situations in which Congress properly exercises its authority under an enumerated constitutional power. . . .

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[5] Because the Court of Appeals in *City of Gary* concluded that the PLCAA did not bar the City's suit, it did not reach the constitutional issues addressed by the trial court. *See City of Gary v. Smith & Wesson Corp*, 875 N.E.2d 422, 434-35 (Ind. Ct. App. 2007).

Inasmuch as Congress passed the CSRA pursuant to the valid exercise of such an enumerated power (the power to regulate interstate commerce), that tenet governs here." *Bongiorno*, 106 F.3d at 1033.

In *Johnson*, the Court rejected appellants' contention that the CSRA "infringe[d] on two traditional areas of state sovereignty: criminal law and family law," and that it inappropriately regulated "'states as states' by interfering with their parens patriae roles in relation to minors." *Johnson*, 114 F.3d at 480-81.

Despite this consistent body of precedent, Petitioners argue that the Illinois Supreme Court was required to go further to determine if there was interference with state sovereignty. Petitioners rely on the "three-part test" referenced in *Johnson* and set out more fully in *Hodel v. Virginia Surface Mining & Reclam. Ass'n, Inc.*, 452 U.S. 264, 287-88 (1981). *Hodel* in turn, relied on the Court's opinion in *National League of Cities v. Usery*, 426 U.S. 833 (1976), for the requirement to examine whether a federal statute addressed "matters that are indisputably '[attributes] of state sovereignty.'" *Hodel*, 452 U.S. at 288 (quoting *National League of Cities*, 426 U.S. at 845). The Court in *Hodel* found that the Tenth Amendment was not implicated in that case because the Surface Mining Act regulated private parties rather than the "States as States." *Hodel*, 452 U.S. at 287-88. *Hodel* has since come to stand for the proposition that the Tenth Amendment bars a statute that "commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *See New York*, 505 U.S. at 176 (quoting *Hodel*, 452 U.S. at 288). Yet, that is the precise test applied by the Illinois Supreme Court following similar reasoning from *City of New York v.*

Beretta U.S.A. Corp., 524 F.3d 384, 396 (2nd Cir. 2008) *cert. denied*, 129 S.Ct. 1579 (Mar. 9, 2009).

Petitioners point to the *Johnson* court's analysis of whether the CSRA interfered with "traditional areas of state sovereignty," *Johnson*, 114 F.3d at 480, to support their argument that the Illinois Supreme Court improperly failed to consider this purported additional element. The "traditional government functions" analysis in *Johnson* grew out of the test enunciated in *National League of Cities*, which this Court explicitly overturned in *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

In *Garcia*, this Court acknowledged that *National League of Cities* "did not explain what aspects of such [State] decisions made them such an 'undoubted attribute [of state sovereignty],' and the Court since then has remarked on the uncertain scope of the concept." *Garcia*, 469 U.S. at 548. The Court described the problems inherent in the approach Petitioners claim the Illinois Supreme Court should have followed here:

> We doubt that courts ultimately can identify principled constitutional limitations on the scope of Congress' Commerce Clause powers over the States merely by relying on *a priori* definitions of state sovereignty. In part, this is because of the elusiveness of objective criteria for "fundamental" elements of state sovereignty, a problem we have witnessed in the search for "traditional governmental functions." There is, however, a more fundamental reason: the sovereignty of the States is limited by the Constitution itself. A variety of sovereign powers, for example, are withdrawn from the States by Article I, § 10. Section 8 of the same Article works an equally

> sharp contraction of state sovereignty by authorizing Congress to exercise a wide range of legislative powers and (in conjunction with the Supremacy Clause of Article VI) to displace contrary state legislation. . . . By providing for final review of questions of federal law in this Court, Article III curtails the sovereign power of the States' judiciaries to make authoritative determinations of law.

Id. at 548-49. In light of the fact that the "traditional areas of state sovereignty" test is "unsound in principle and unworkable in practice," *id.* at 546, the Court overturned the holding of *National League of Cities* and held:

> [W]e are convinced that the fundamental limitation that the constitutional scheme imposes on the Commerce Clause to protect the "States as States" is one of process rather than one of result. Any substantive restraint on the exercise of Commerce Clause powers must find its justification in the procedural nature of this basic limitation, and it must be tailored to compensate for possible failings in the national political process rather than to dictate a "sacred province of state autonomy."

Id. at 554. Thus, to the extent Petitioners rely on an analysis of interference with "traditional governmental functions" (*see* Petition at 16), that approach is simply outdated and inapplicable in this case.

Because Petitioners have not and cannot show any genuine conflict between the standard applied by the Illinois Supreme Court and the decisions of this Court or any Circuit court, the Court should deny review.

III. THE PLCAA APPLIES EQUALLY TO ACTIONS BASED ON STATE STATUTES OR COMMON LAW AND DOES NOT DICTATE WHICH BRANCH OF STATE GOVERNMENT "IS THE AUTHORITATIVE EXPOSITOR OF STATE LAW."

Petitioners contend that the Tenth Amendment also prohibits the federal government from interfering with the structure and operation of state government, and the PLCAA violates this prohibition by dictating which branch of state government will be recognized as the "authoritative expositor" of the state's pertinent laws. Petition at 7, 13-15. This argument is premised on Section 7903(5)(A)(iii) of the PLCAA, which Petitioners' erroneously contend favors legislative enactments over judge-made law. As explained in in Section I, *supra*, Section 7903(5)(A)(iii) of the PLCAA has no application to this case. Moreover, as discussed in Section II, *supra*, Petitioners' characterization of Tenth Amendment jurisprudence is both outdated and without merit.

First, none of the cases cited by Petitioners support its novel expansion of the Tenth Amendment to Congressional enactments that neither facially nor in practice coerce the States to do anything.[6] Second,

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[6] Indeed, most of the cases cited by Petitioners do not even involve the Tenth Amendment. *See, e.g., Alden v. Maine*, 527 U.S. 706 (1999) (state immunity from private suit under FLSA); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (equal protection challenge); *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608 (1937) (delegation of state authority to commission raised no federal constitutional issues). The issue in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), was a state's fundamental right to establish qualifications for its own governing officials, and even then, the Court recognized that "[a]s long as

Petitioners' contention that the PLCAA interferes with states' allocation of authority between their judicial and legislative branches by permitting statutory but not common law claims is premised on a fundamental misreading of the PLCAA. The Act does not favor statutory law over common law, as Petitioners contend. Indeed, the Act contains exceptions permitting specified common law claims to proceed. *See, e.g.*, 15 U.S.C. § 7903(5)(A)(iv) (breach of contract or warranty). Nor does the Act dictate which branch of state government may articulate state law.

Rather, as the Illinois Supreme Court correctly held, the PLCAA sets a new single federal standard that governs what claims may and may not be brought against firearm manufacturers and sellers—a standard that applies equally to preempt conflicting state law claims, whether those claims are based on common law or state statute. Pet. App. 44a.[7]

IV. THE ILLINOIS SUPREME COURT CORRECTLY APPLIED THE PLAIN LANGUAGE OF THE PLCAA'S PRODUCT LIABILITY EXCEPTION (15 U.S.C. § 7903(5)(A)(V)) TO THE FACTS OF THIS CASE.

Petitioners contend that the Illinois Supreme Court should have conducted an examination of the Con-

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it is acting within the powers granted it under the Constitution, Congress may impose its will on the States." *Id.* at 460.

[7] The Illinois Supreme Court agreed with the Second Circuit in its conclusion that "[t]he PLCAA bars qualified civil liability actions, as defined in the statute. The definition of qualified civil liability action permissibly sets forth a new legal standard to be applied to all actions." *City of New York, supra*, 524 F.3d at 395-96. Accordingly, ". . . [t]he PLCAA does not merely direct the outcome of cases, but changes the applicable law . . . ." *Id.*

gressional Record to ascertain congressional intent with respect to the product liability exception of the PLCAA. Had the court done so, Petitioners argue, there would have been some record from which to conclude that Congress did not intend to preclude traditional product liability claims like those brought by Petitioners. Petition at 24-26. Petitioners further argue that the Illinois Supreme Court's application of the product liability exception is in conflict with the Act's findings and purposes. However, these arguments ignore the plain language of the Act and improperly seek to substitute Petitioners' interpretation of selected excerpts from the Congressional Record over the express statutory language contained in the final version of the Act.

"There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. American Trucking Ass'ns, Inc.*, 310 U.S. 534, 543 (1940). *See also Caminetti v. United States*, 242 U.S. 470, 490 (1917). The task of ascertaining the product liability exception's purpose begins where all such inquiries must begin: with the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). Where, as here, the statute's language is plain, it is also where the inquiry should end, as "the sole function of the courts is to enforce it according to its terms." *Caminetti, supra*, 242 U.S. at 485. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992) (internal citations omitted); *Rubin v. United States*, 449 U.S. 424, 430 (1981).

The language at issue here—the text of Sections 7903(5)(A) and 7903(5)(A)(v)—clearly expresses Congress's intent with sufficient precision so that reference to legislative history is unnecessary and unwarranted.

The Act prohibits the bringing of a "qualified civil liability action" in any federal or state court, and it compels immediate dismissal of any such action "pending on the date of enactment [enacted Oct. 26, 2005] . . . ." 15 U.S.C. §§ 7902(a), (b). A "qualified civil liability action" means "a civil action . . . *brought by any person* against a manufacturer or seller of a qualified product, or trade association, for damages . . . resulting from the criminal or unlawful misuse of a qualified product by the person or a third party . . . ." 15 U.S.C. § 7903(5)(A)[emphasis added][8].

"[B]ased on the plain language of the statute," the Illinois Court of Appeal concluded without analysis that the PLCAA applied to Petitioners' case and that the product liability exception (15 U.S.C. § 7903(5)(A)(v)) was the only exception in the Act upon which they could arguably rely to avoid dismissal. Pet. App. 98a.

In its briefing before the Illinois Supreme Court, Petitioners denied that their action fit within the definition of a "qualified civil liability action" under the Act. Thus, the court undertook the task of analyzing how the PLCAA applied to Petitioners' claims

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[8] Congress's use of the phrase "any person" in Section 7903(5)(A) defining "qualified civil liability action" further supports the view that the Act is intended to preclude actions brought not only by governmental entities but by individuals as well, provided such actions for damages were the result of criminal or unlawful misuse of a qualified product. 15 U.S.C. § 7903(5)(A).

with the "relevant inquiry" being "whether the misuse of the Beretta was criminal or unlawful." Pet. App. 39a. In so doing, the court concluded that Billy's commission of involuntary manslaughter and/or reckless discharge of a firearm were both "unlawful," as that term is defined in Section 7903(9), and "criminal" as that term is used in Section 7903(5)(A). Pet. App. 36-37a (holding that both of Billy's violations of the Illinois Criminal Code satisfied the "unlawful" and/or "criminal misuse" requirements of the Act).[9] Thus, the court specifically determined that Petitioners' wrongful death action against Beretta U.S.A. Corp. was "a qualified civil liability action as defined in the PLCAA." Pet. App. 39a. On these facts, there is simply no other reasonable conclusion.

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[9] Citing selected excerpts from the Congressional Record, *amici* argue that the Act was never intended to apply to product liability suits against manufacturers arising out of "accidental" shootings. This argument completely ignores the central purpose of the Act, as expressed in its findings, purposes and express language in its substantive provisions; namely, that precluded suits are those that result from "the criminal or unlawful misuse" of a qualified product. 15 U.S.C. § 7903(5)(A). And, to the extent a product liability action is at issue, even those suits are precluded if the injury-causing discharge "was caused by a volitional act that constituted a criminal offense," because that volitional discharge then becomes "the sole proximate cause" of the resulting injury or death. 15 U.S.C. § 7903(5)(A)(v).

Here, while Joshua's death is a tragic "accident" in the broad sense, the Illinois courts, beginning with the juvenile court, found that Billy's conduct was not simply "accidental" but instead violated two Illinois Criminal Code statutes—involuntary manslaughter and reckless discharge of a firearm. These specific factual findings, which were affirmed on appeal, support the Illinois Supreme Court's conclusion that the clear language of the Act precluded Petitioners' action.

Under the Act, there are six types of actions excepted from the statutory definition of a qualified civil liability action and those actions are set forth at 15 U.S.C. §§ 7903(5)(A)(i)-(vi).

The fifth of those exceptions, the "product liability exception," exempts actions for death or physical injuries or property damage "resulting directly from a defect in design or manufacture of the product . . . ." 15 U.S.C. § 7903(5)(A)(v). However, the Act provides that even those actions are barred "where the discharge of the product was caused by a volitional act that constituted a criminal offense." *Id.* In such circumstances, "then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage." *Id.* Thus, while the product liability exception can serve to exempt certain design or manufacturing defect actions, it does so only if the discharge of the product was not caused by a volitional act that constituted a criminal offense. *Id.* Without the product liability exception to save it, the Act requires Petitioners' qualified civil liability action be dismissed.

Here, of course, the Illinois Supreme Court had no trouble concluding that a number of Billy's actions—including loading and unloading the subject pistol, pointing it at Joshua and pulling the trigger—were "volitional." Pet App. 42a (". . . even if Billy did not intend to shoot Josh, Billy did choose and determine to point the Beretta at Josh and did choose and determine to pull the trigger."). Moreover, that court easily found that Billy's commission of either involuntary manslaughter (720 ILCS 5/9-3(a)) or reckless discharge of a firearm (720 ILCS 5/24-1.5(a))—both criminal offenses under the Illinois Criminal Code—"constituted a criminal offense" under the product

liability exception. Pet. App. 36-39a, 41a. Once the state court's factual findings were applied to the plain language of the Act, the conclusion was inescapable—Billy's discharge of the subject Beretta pistol "shall be considered the sole proximate cause" of Joshua's death. 15 U.S.C. § 7903(5)(A)(v). Accordingly, the plain and unambiguous language of the Act itself compelled dismissal of Petitioners' product liability claims against Respondent. 15 U.S.C. § 7902(b).

Petitioners' reliance on the Act's findings and purposes is unavailing. Nowhere does the Act limit its application to suits commenced by states or municipalities "based on theories without foundation in hundreds of years of the common law . . . ." 15 U.S.C. § 7901(a)(7). *See* Petition at 25-26. Indeed, two of the Act's express findings make no such distinction and are therefore applicable to all suits, whether brought by individuals or governmental entities.[10] *See* 15 U.S.C. §§ 7901(a)(3) and (a)(5).

Indeed, "[t]he PLCAA's stated primary purpose" is to "prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended." *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1135 (9th Cir. 2009)(citing 15 U.S.C. § 7901(b)(1)).

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[10] Appellate decisions construing the PLCAA thus far have included cases brought by both individuals as well as governmental entities. *See, e.g., Ileto v. Glock, Inc., supra,* (a case involving claims by individual plaintiffs against firearm manufacturer Glock, Inc.) and *City of New York, supra,* (a case brought by the City of New York, its mayor and others).

Moreover, the definition of preempted "qualified civil liability actions" expressly includes actions "resulting from the criminal or unlawful misuse" of a qualified product by a third party. 15 U.S.C. § 7903(5)(A). In light of the record evidence in this case, the Illinois Supreme Court correctly concluded that Billy's conduct constituted a "criminal or unlawful misuse of the Beretta for purposes of the PLCAA." Accordingly, because Petitioners' action below constituted a "qualified civil liability action" subject to dismissal, the Illinois Supreme Court correctly dismissed Petitioners' action against Beretta. Pet. App. 39a, 43a.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

State Statutes
Illinois Criminal Code of 1961

720 ILCS 5/9-3
Involuntary Manslaughter and
Reckless Homicide.

Sec. 9-3(a) A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly, except in cases in which the cause of the death consists of the driving of a motor vehicle or operating a snowmobile, all terrain vehicle, or watercraft, in which case the person commits reckless homicide. A person commits reckless homicide if he or she unintentionally kills an individual while driving a vehicle and using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

720 ILCS 5/24-1.5
Reckless Discharge of a Firearm.

Sec. 24-1.5(a) A person commits reckless discharge of a firearm by discharging a firearm in a reckless manner which endangers the bodily safety of an individual.

APPENDIX B

ILLINOIS SUPREME COURT RULES

Rule 23. Disposition of Cases in the Appellate Court

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order. Only opinions of the court will be published.

(a) Opinions. A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied:

(1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or

(2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

(b) Written Order. Cases which do not qualify for disposition by opinion may be disposed of by a concise written order which shall succinctly state:

(1) the germane facts;

(2) the issues and contentions of the parties when appropriate;

(3) the reasons for the decision; and

(4) the judgment of the court.

(c) Summary Order. In any case in which the panel unanimously determines that any one or more of the following dispositive circumstances exist, the

decision of the court may be made by summary order. A summary order may be utilized when:

(1) the Appellate Court lacks jurisdiction;

(2) the disposition is clearly controlled by case law precedent, statute, or rules of court;

(3) the appeal is moot;

(4) the issues involve no more than an application of well-settled rules to recurring fact situations;

(5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;

(6) no error of law appears on the record;

(7) the trial court or agency did not abuse its discretion; or

(8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence.

When a summary order is issued it shall contain:

(i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;

(ii) a citation to controlling precedent, if any; and

(iii) the judgment of the court and a citation to one or more of the criteria under this rule which supports the judgment, e.g., "Affirmed in accordance with Supreme Court Rule 23(c)(1)."

The court may dispose of a case by summary order at any time after the case is docketed in the Appellate Court. The disposition may provide for dismissal, affirmance, remand, reversal or any combination thereof as appropriate to the case. A summary order may be entered after a dispositive issue has been fully briefed, or if the issue has been raised by motion of a party or by the court, *sua sponte*, after expiration of the time for filing a response to the motion or rule to show cause issued by the court.

(d) Captions. All opinions and orders entered under this rule shall bear a caption substantially conforming to the requirements of Rule 330.

(e) Effect of Orders. An unpublished order of the court is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. When cited for these purposes, a copy of the order shall be furnished to all other counsel and the court.

(f) Motions to Publish. If an appeal is disposed of by order, any party may move to have the order published as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order.

APPENDIX C

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 1-02-1170

In Re: W.S., a Minor,

THE PEOPLE OF THE STATE OF ILLINOIS,
Petitioner-Appellee,

v.

W.S.,
Respondent-Appellant.

Appeal from the Circuit Court of Cook County.
No. 99 JD 2815

FIFTH DIVISION
November 26, 2003

Honorable Joseph M. Claps, Judge Presiding

ORDER

Following an adjudicatory hearing, the circuit court found minor respondent W.S. delinquent based upon his commission of involuntary manslaughter and reckless discharge of a firearm. At disposition, the

trial court remanded respondent to four months in the juvenile division of the Department of Corrections. Respondent was subsequently released on home confinement and currently remains on intensive probation. Upon appeal, respondent contends that: (1) the State failed to prove him guilty beyond a reasonable doubt; and (2) the trial court erred by excluding expert testimony regarding respondent's mental state at the time of the killing. We affirm.

At the hearing, Detective Tom Kelly testified that on May 5, 2001, he spoke with the 13-year-old respondent at police headquarters regarding the shooting death of Joshua Adames (Josh). Respondent told Detective Kelly that earlier on May 5, he was home alone and called his friend Josh to come over. Josh said that he would be there in 20 minutes. While waiting for Josh, respondent went to the closet in his parents' bedroom and took a case off the shelf. The case contained three guns belonging to respondent's father, who was employed by the Cook County Sheriff's Department.

Respondent told Detective Kelly that he took out a nine-millimeter handgun and pulled back the slide, ejecting a live round. He put the live round back into the clip, and then put the clip into the gun. Respondent went to the window and saw a friend, Michael Pearce, riding his bike. Respondent invited Michael into his house and showed him the weapons. When showing Michael the nine-millimeter handgun, respondent again pulled back the slide, ejecting a live round. He again dropped the clip out of the gun. He then put the live round into the clip and placed the clip into the gun. Respondent jokingly told Michael that he was "trigger-happy" and that he intended to shoot Josh.

After Josh arrived, respondent pointed the nine-millimeter gun at him and jokingly stated that he was going to shoot him. Once again, respondent pulled back the slide, ejecting a live round. He dropped the clip out the gun and placed the live round in the clip. This time, though, respondent did not put the clip into the gun. Instead, he aimed the gun at Josh and pulled the trigger. The weapon discharged, striki:.g Josh. Not realizing that Josh had been shot, respondent went upstairs and put away the guns. Respondent then came back downstairs, discovered that Josh had been shot, and called 911. Josh was rushed to the hospital, where he later died.

Respondent told Detective Kelly that he did not intend to actually shoot Josh, that he thought he had unloaded the gun by ejecting the live round and removing the clip.

Tanya Brubaker, a forensic scientist with the Illinois state police crime lab, testified that when respondent pulled back the slide, he ejected one live round from the chamber. However, when respondent released the slide, he caused a second live round to load from the clip into the chamber. This second live round remained in the chamber even after respondent removed the clip. When respondent pulled the trigger, the second live round discharged, striking Josh.

Officer Thomas Purtell testified that he went to respondent's house in response to a call of a person shot at that location. When he arrived at the scene, Officer Purtell saw paramedics working on Josh. Officer Purtell spoke with respondent, who was crying hysterically. Respondent told Officer Purtell that he had accidentally shot Josh.

Michael Pearce testified that on May 5, 2001, he was riding his bike near respondent's house when respondent called to him from out his window. Michael went inside respondent's house, and saw that respondent had guns in his hands. Respondent opened the barrel of one of the guns, a revolver, and showed Michael that there were no bullets inside. Respondent then showed Michael the nine-millimeter handgun. Respondent released the clip and showed Michael that there were bullets inside. Michael testified that respondent had no problem releasing the clip. Michael testified on cross examination that respondent thought all the bullets were in the clip, and that the gun was otherwise empty of bullets. Respondent jokingly told Michael that he was trigger-happy and that he intended to shoot Josh. When Josh arrived, Michael was in the computer room. Michael heard a loud noise, and went to the front door to see what had happened. Michael saw Josh lying on the floor. Josh stated that he had been shot; respondent then called 911.

Six of respondent's friends testified that they had never seen respondent in possession of a gun, and that respondent had never spoken to them about guns. Respondent's grandfather, Charles S., testified that he had never seen respondent handle a weapon and that he had never instructed or trained respondent in the use of firearms. Respondent's mother, Michelle S., testified that neither she nor her husband, David S., had ever instructed respondent about the use or safety of firearms. Michelle S. also testified that, to her knowledge, no one had ever given respondent any instructions relating to the use of firearms.

Doctor Peter Fink, a psychiatrist, testified that he conducted a clinical psychiatric examination of the respondent in July and August 2001. During the examination, respondent stated that he had never handled a handgun prior to the shooting, and that he had never received any training as to how to handle a firearm.

Doctor Fink further testified:

> "Q. Do you have an opinion as to whether [respondent's] actions at the time of the [shooting] were appropriate considering his age and lack of training and experience with a handgun?
>
> A. Yes, I do.
>
> Q. And what is that opinion?
>
> A. That they were in fact appropriate and consistent with his age, training, and experience.
>
> Q. And can you give the court the basis for that opinion?
>
> A. * * * [Respondent] specifically described to me the steps he took that made him feel that the gun was unloaded and what he did is that essentially three times he manipulated the slide on the weapon. On the third occasion, he did something different which is that he removed the clip. And if you look at that sequence of events, what that illustrates is that he seemed to feel that there was something about the clip that had to do with what we would call chambering a round * * *. He sort of convinced himself that if he removed the clip then there would be no way for the gun to be loaded in his concept of loaded.
>
> * * *

> Q. Do you have an opinion as to whether [respondent] acted impulsively with respect to his actions with the gun that you have just described?
>
> A. Absolutely not.
>
> Q. What is the basis for that?
>
> A. * * * He took steps to understand in his limited experience without training how that particular firearm worked with a specific goal of trying to determine that it was not loaded. And unfortunately he tragically failed but his steps without understanding the concept of chambering a round in an automatic weapon in my experience for someone his age was unusually careful,"

In finding respondent delinquent based upon involuntary manslaughter and reckless discharge of a firearm, the trial court explained why it found his actions to be reckless.

Specifically, the court stated:

> "I find that the minor did pull the trigger while it was pointed in the direction of the named victim at a time when he knew there were bullets in the gun. His actions prior to the shooting, of unloading and loading, removing the clip, shows sufficient knowledge as to the working elements of that firearm, that his actions in pointing that gun with the bullets in it and pulling the trigger in the direction of the named victim is a reckless act."

Respondent contends upon appeal that the trial court erred in finding him delinquent based upon involuntary manslaughter and reckless discharge of a firearm because the shooting was an accident. In support, respondent points to the evidence that he

believed he had removed all the bullets from the gun by removing the clip.

The State must prove the elements of the substantive offenses alleged in delinquency petitions beyond a reasonable doubt. *In re W.C.,* 167 Ill. 2d 307, 336 (1995). This court will not overturn a trial court's finding of delinquency unless, after reviewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the offenses beyond a reasonable doubt. *In re W.C.,* 167 Ill. 2d at 336.

A person commits involuntary manslaughter when he unintentionally kills another without lawful justification "if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly * * *." 720 ILCS 5/9-3(a)(West 2000). A person commits reckless discharge of a firearm by "discharging a firearm in a reckless manner which endangers the bodily safety of an individual" 720 ILCS 5/24-1.5(a)(West 2000). A person acts recklessly when he "consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2000).

Respondent points to the testimony of Michael Pearce, Officer Purtell, Detective Kelly, and Doctor Fink, all of whom testified that respondent told them he believed he had unloaded the gun by removing the clip prior to the shooting. Respondent contends said evidence establishes that the shooting was an acci-

dent, and does not support the trial court's finding that he acted recklessly.

The trial court discounted respondent's statements that he had no prior experience with firearms and he was unaware the gun was loaded at the time he pulled the trigger. The trial court found respondent's statements were contradicted by the evidence that he had correctly demonstrated multiple times how to pull back and release the slide to eject a live round from the nine-millimeter handgun and then unload and reload the clip. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude, as the trial court did here, that respondent was more familiar with the working elements of the firearm than he was admitting, that he knew how to load and unload the gun, and that he was aware that releasing the slide caused a bullet to rotate into the gun's chamber. Respondent nevertheless pointed the gun in the direction of the victim and pulled the trigger, without checking to see whether or not there was a bullet in the chamber. A rational trier of fact could conclude that by failing to verify that the gun was unloaded prior to aiming it at the victim and pulling the trigger, respondent acted with a conscious disregard of a substantial risk that he would cause great bodily harm or death. A rational trier of fact could also conclude that such disregard constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation. Accordingly, the evidence was sufficient to support the trial court's finding that respondent was delinquent based upon involuntary manslaughter and reckless discharge of a firearm. *See e.g., People v. Schwartz*, 64 Ill. App. 3d 989 (1978) (holding that the trier of fact could find defendant guilty of involuntary manslaughter where he failed to

check whether the gun was loaded prior to aiming it at the victim and pulling the trigger.)

Further, the evidence was sufficient to support the trial court's finding that respondent was delinquent based upon involuntary manslaughter and reckless discharge of a firearm even if respondent was not familiar with the working elements of the firearm, as he could not have been assured that the gun was unloaded even after the clip was out. Specifically, respondent knew the gun was potentially dangerous, as he admittedly was aware that the gun's clip contained bullets. Respondent was also aware that he had received no training regarding how to unload the firearm, and therefore he knew he could not be certain he had completely unloaded the weapon by removing the clip. Nevertheless, respondent disregarded the danger, pointed the gun at the victim and pulled the trigger. A rational trier of fact could find that by aiming the gun at the victim and pulling the trigger despite the lack of assurance that the gun was not loaded, the respondent consciously disregarded a substantial risk that he would cause great bodily harm or death. A rational trier of fact could also conclude that such disregard constituted a gross deviation from the standard of care which a reasonable person would exercise in the situation. Accordingly, we affirm the finding of delinquency based upon involuntary manslaughter and reckless discharge of a firearm.

Respondent contends that *In re Interest of Landorf*, 7 Ill. App. 3d 89 (1972), compels a different result. In *Landorf*, the minor was cleaning a gun when his friend picked it up, cocked it, and pointed it at a wall. *Landorf*, 7 Ill. App. 3d at 90. Afraid that the gun would go off, the minor told his friend to put the gun

down. *Landorf*, 7 Ill. App. 3d at 90. The minor then unloaded the gun. *Landorf*, 7 Ill. App. 3d at 90. When the minor turned away, the friend reloaded the gun and gave it back to him. *Landorf*, 7 Ill. App. 3d at 90. Not knowing that the gun was now loaded, the minor held the gun in his hand and the gun "went off", striking his friend. *Landorf*, 7 Ill. App. 3d at 90. The trial court found the minor to be delinquent based, in part, upon the minor's reckless conduct in shooting his friend. *Landorf*, 7 Ill. App. 3d at 90. The appellate court vacated the adjudication of delinquency, holding that the minor did not act recklessly as he did not know that the gun was loaded at the time of the shooting. *Landorf*, 7 Ill. App. 3d at 91.

Landorf is factually inapposite. Unlike *Landorf*, the respondent here did not ensure that the gun was unloaded, and the victim did not reload the gun without telling him. Rather, as discussed, respondent failed to check the chamber to ensure that there were no bullets in the gun prior to aiming it at the victim and pulling the trigger. A rational trier of fact could find that respondent's conduct constituted recklessness.

Respondent next argues that the statutory definition of" recklessness" provides that the trier of fact must consider his age in determining whether he acted recklessly. As discussed, under the statutory definition of "recklessness," a person acts recklessly when he "consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow * * * and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2000). Respondent contends that the trier of fact must consider his age (13) in

determining whether he consciously disregarded a substantial and unjustifiable risk when pointing the gun at the victim and pulling the trigger. Respondent also contends that the trier effect must consider whether such disregard constitutes a gross deviation from the standard of care which a reasonable 13-year-old would exercise in the situation.

Even assuming, without deciding, that the statutory definition of "recklessness" provides that the respondent's age must be taken into account, a rational trier of fact could find that the 13-year-old respondent consciously disregarded a substantial and unjustifiable risk when aiming the gun at the victim and pulling the trigger. A rational trier of fact could also find that such disregard constituted a gross deviation from the standard of care which a reasonable 13-year-old would have exercised in the situation. See our discussion above concerning the sufficiency of the evidence. Accordingly, we affirm the trial court's finding that respondent was delinquent based upon involuntary manslaughter and reckless discharge of a firearm.

Next, respondent argues that the trial court erred by refusing to allow his expert, Doctor Fink, to testify regarding respondent's mental state at the time of the shooting. Expert testimony is proper where such testimony is needed to explain matters beyond the common knowledge of ordinary persons and helps the fact finder in reaching a conclusion. *People v. Gilliam*, 172 Ill. 2d 484, 513 (1996). The admission of expert testimony is within the discretion of the trial court, which we will not disturb absent an abuse of discretion. *People v. Nestrock*, 316 Ill. App. 3d 1, 11 (2000).

The trial court allowed Doctor Fink to testify regarding scientific principles of adolescent development and the way in which those developmental principles affected the juvenile respondent's understanding and appreciation of risk. Such testimony was beyond the common knowledge of the fact finder and was properly admitted. The trial court refused to allow Doctor Fink to testify to the ultimate conclusion as to whether respondent was reckless at the time of the shooting; the court determined that it could decide for itself, after hearing all the testimony, whether respondent acted recklessly in shooting the victim. We find no abuse of discretion.

For the foregoing reasons, we affirm the circuit court.

Affirmed.

O'BRIEN, J., with REID, J., and HARTIGAN, J., concurring.